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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,343	06/25/2003	Joanne Mary Holmes	F3311(C)	2624

201 7590 05/22/2007  
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EXAMINER
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CHAWLA, JYOTI

ART UNIT	PAPER NUMBER
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1761

MAIL DATE	DELIVERY MODE
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05/22/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/603,343	Applicant(s) HOLMES ET AL	
	Examiner Jyoti Chawla	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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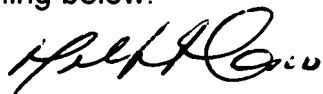
### DETAILED ACTION

In view of the Appeal Brief filed on January 16, 2007, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below. The Amendments filed October 8, 2005 have been entered. Claims 1-9 remain pending in the application. To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below.



MILTON I. CANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1760

### *Claim Objections*

Claims 1-9 are objected to because of the following informalities: Spellings of terms "characterised" and "fluidized" need changing to conform to US practice.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The claims 1-9 are generally narrative and indefinite, failing to conform with current U.S. practice, e.g., claim 1 is indefinite for the recitation of "method being characterized in that the mixture of tea leaves and tea powder is simultaneously wetted and dried" as it is unclear as to what is meant by the term "characterized". It is also unclear as to when and how the tea leaves and the tea powder are wetted simultaneously. The term simultaneous is being interpreted as "existing at the same time" for the purposes of prior art comparison. Thus the claim is being interpreted as a method of making a tea product where tea leaves and tea solids are simultaneously wet at some point in the method and are dried together.

#### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(A) Claims 1, 3 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Koene et al (US 4534983).

The rejection is withdrawn in light of applicant's arguments.

(B) Claims 1-4 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Carns et al (EP 0910956A1).

The rejection is withdrawn in light of applicant's arguments.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

(1) Rejection of claims 4-8 under 35 U.S.C. 103(a) as being unpatentable over Koene (US 4534983) as applied to claims 1 and 3 above, and further in view of Hampton et al (GB 2239305 A) and further in view of Menzi et al (US 6056949), has been with drawn in light of applicant's arguments (Brief Arguments , pages 11 and 12).

(2) Claims 1-4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carns et al (EP 0910956A1).

Regarding claim 1, Carns et al, hereinafter Carns, teaches a method of making a combined tea product with a mixture of tea leaves and tea solids (Abstract) as instantly claimed. Carns teaches a method where tea solids are coated on the tea leaves. The reference further teaches that the tea concentrate, i.e., spraying the tea concentrate onto the tea leaves and drying the leaves; either simultaneously or in separate steps (Page 3, lines 42-44). Therefore the reference teaches that the tea leaves and the soluble tea solids are wet together and are dried together as recited the method recited in claim 1.

Alternatively, the soluble tea solids are mixed with the liquid (water) and the mixture is sprayed over the fluidized bed containing tea leaves. Thus the reference teaches a combined tea product comprising tea leaves and soluble tea solid, where the soluble tea solids *may be* dissolved in water prior to forming the combined tea product (Page 3, line 42). Therefore, it would have been obvious to one of ordinary skill in the art at the

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time of the invention that various methods of combining tea leaves and soluble tea solids may be used. Thus to modify Carns and combine the two components in the dry form and spray the dry mixture with water in order to make the combined tea product faster by eliminating the step of dissolving the tea solids would have been in the purview of one having ordinary skill in the art at the time of the invention. One would have been motivated to do so in order to economize on time, energy and equipment cost.

Regarding claim 2, Carns teaches about 5% -70% of tea powder in the tea product (Page 3, lines 46-47), which falls within the range of about 10% - 75% as instantly claimed.

Regarding claim 3, Carns teaches the final moisture content of the mixture of tea leaves and tea solids in the range of about 3-7% (Page 5, lines 30-31) which falls within the range of 3-8% as instantly claimed.

Regarding claim 4, Carns teaches that the coating process where the tea powder or concentrate is coated on tea leaves can be carried out in a fluidized bed drier (Page 3, lines 43-44), as instantly claimed.

Claim 9 recites that the fabricated leaf tea product gives an infusion under 10 to 15 seconds with water at a temperature between 80-90<sup>0</sup>C. Carns teaches that the combination tea product gives an infusion at 22<sup>0</sup>C for 90 seconds, and Lipton's tea bag (Bag A) gives a good color after 90 seconds at 75<sup>0</sup> C (pages 4, line 45 to page 5, line 10). The reference also teaches that the combined tea product as taught by Carns gives a darker color infusion than other bags at 22<sup>0</sup> C (Page 5, lines 35 to 58). Thus the reference teaches of a strong infusion (0.8 Absorbance) from the combined tea product at room temperature in 90 seconds. The reference, however, is silent about an infusion in 10-15 seconds at 80-90<sup>0</sup>C. However, tea products are known to give some infusion in a few seconds after the addition of water. Further the rate of infusion is known to increase as the temperature of water increases, i.e., tea infuses much faster in hot water as compared to cold water. Further was well known that tea-dispensing machines

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heat the water in the range of 80 -90°C and infuse the tea for 10-15 seconds before dispensing, for example, as admitted by the applicant at page 7 (lines 27-30) of the specification. Therefore, based on the above teachings of a strong infusion at 22°C and the method of making the product (as taught by Carns), one of ordinary skill in the art at the time of the invention would expect that the product taught by Carns will have similar properties of infusion, as recited in claim 9, absent any clear and convincing evidence or arguments to the contrary.

Applicant is reminded that where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a prima facie case of either anticipation or obviousness has been established. In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). "When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not." In re Spada, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

(2) Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carns et al (EP 0910956A1) in view of Menzi et al (US 6056949).

Carns has been applied to claims 1-4 and 9, as discussed above.

Carns teaches a method of combined tea product with a mixture of tea leaves and tea solids as instantly claimed. Carns teaches the combining of tea solids or tea concentrate with tea leaves in a fluidized bed drier, however the reference does not specify the temperature fluidized bed and of water or liquid used to wet the tea product as recited in claims 7-8 and 5-6 respectively.

Fluidized bed driers have been known in the art of drying foods including tea products. Thus one of ordinary skill in the art at the time of the invention would have been motivated to look to the art to find the appropriate temperature of fluidized bed and of water or fluid for the tea product. Menzi et al., hereinafter Menzi, teaches a process of

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making granulated flavorings including tea flavors (example 6) where the core material is vegetable matter such as tea powder. Menzi teaches the use of fluidized bed apparatus for coating the base material with flavors (column 1, line 61) by spraying and drying. The air temperature taught by Menzi for the coating and drying process ranges from about 30-80°C (column 2, lines 49-51). Which includes the temperature range recited by the applicant in claims 7 and 8. Thus drying temperatures in the range recited by the applicant have been known to be employed for making combined tea products as taught by Menzi. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Carns and dry the combined tea product in the temperature range taught by Menzi, in order to make the combined tea product at a suitable temperature without losing the flavor and aroma characteristics of tea product. One would have been further motivated to keep the temperature in the range taught by Menzi to produce a consistent product at an optimal rate.

Carns is silent regarding the temperature of water or liquid being sprayed on the tea product on the fluidized bed. However Menzi teaches an optimal fluidized bed temperature range of 30-80°C for coating food products, such as, tea. Menzi also teaches spraying as a method of coating the flavor on to the base material (tea), as discussed above. The temperature of the fluidized bed is kept relatively constant so that the drying/coating process runs at a uniform rate and the product quality is uniform. Thus it would be a matter of routine determination for one of ordinary skill in the art at the time of the invention to raise the temperature of water or liquid to a desired range such that the temperature of the product in the fluidized bed does not change significantly as a result of spraying of water or a liquid coating material. If colder water were to be used to wet the tea product then it would either use more energy to bring the temperature of the wet-tea product at par with the set temperature of the fluidized bed, i.e., 30-80°C, which includes the range recited by the applicant in claims 5 and 6. Therefore, it would have been obvious to one with ordinary skill in the art to modify Carns and spray the tea with water or liquid that is heated to the temperature of the fluidized bed (i.e., 30-80°C) in order to maintain the temperature of the fluidized bed



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between 30-80°C as taught by Menzi and make a consistent product by an energy efficient process. Therefore the invention as recited in claims 5-8 is obvious over Carns, in view of Menzi, absent any clear and convincing evidence and arguments to the contrary.

### ***Response to Arguments***

Applicant's arguments submitted January 16, 2007 regarding 102(b) rejection of claims 1-4 over Koene et al and Carns et al (Brief Argument, pages 7-11) have been considered and have been found persuasive and the rejections have been withdrawn.

Rejection of claims 4-8 under 35 U.S.C. 103(a) as being unpatentable over Koene (US 4534983) as applied to claims 1 and 3 above, and further in view of Hampton et al (GB 2239305 A) and further in view of Menzi et al (US 6056949), has been withdrawn in light of applicant's arguments (Brief Arguments, pages 11 and 12).

Regarding the argument that Carns does not teach the claimed invention, the applicant states claim 1 states "the present invention is ...by mixing tea leaves and tea powder and wetting and drying the resulting mixture simultaneously" (Page 10, Arguments). This is incorrect, as quoted from Claim 1 "A method ...mixing leaf tea with tea solids derived from tea powders, the method being characterised in that the mixture of tea leaves and tea powder is simultaneously wetted and dried". The term "Tea powder" is not the same as "tea solids derived from tea powder".

Regarding the term "simultaneously", simultaneous is defined as "existing or occurring at the same time". Carns reference does teach a mixture of tea leaves and soluble tea powder in a tea bag. The reference further teaches that the soluble tea solids are preferably coated on the tea leaves. The reference also teaches that coating of soluble tea solids on tea leaves may be accomplished by spraying a tea concentrate onto the tea leaves and drying the leaves; either simultaneously or in separate steps. Carns also teaches that the spraying can be done using a suitable coating apparatus, for example, by using a fluidized bed drier (Page 3, lines 40-45). Thus Carns reference does teach that the tea leaves and the soluble tea solids are wet together and are dried together.

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However the reference teaches that the coating *may be* accomplished by dissolving the soluble solids in water, thus indicating that other ways of combining were available at the time of the invention. If tea leaves are (L) soluble tea solids are (S) and water is (W), where the final product is (L+S+W) followed by drying, combining any two components prior to the addition of the third component in such a way that the drying is done after all three components have been mixed [i.e., {(L+S) +W} or {(S+W) +L} or {(L+W)+S}], would not impart patentable distinction to the claims. Therefore the invention as recited in claim 1, is obvious over Carnes absent any clear and convincing evidence and arguments to the contrary.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Chawla whose telephone number is (571) 272-8212. The examiner can normally be reached on 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Jyoti Chawla  
Examiner  
Art Unit 1761

  
**KEITH HENDRICKS**  
**PRIMARY EXAMINER**